

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 11-152—sHB 6629

Judiciary Committee

Appropriations Committee

Insurance and Real Estate Committee

Government Administration and Elections Committee

AN ACT CONCERNING DOMESTIC VIOLENCE

SUMMARY: This act makes numerous changes to the laws on family violence. Among other things, it:

1. requires law enforcement officers to arrest a person who commits a family violence crime against someone he or she is dating;
2. adds aggravated sexual assault of a minor, fourth degree sexual assault, and risk of injury to a minor to the list of crimes for which a judge can order a standing criminal protective order;
3. doubles the fee for the pretrial family violence education program;
4. requires family violence offenders who use or attempt or threaten to use physical force to commit a crime to surrender any firearms they possess to the public safety commissioner;
5. protects victims of orders of protection from criminal liability under certain circumstances;
6. requires, rather than allows, the Judicial Branch's family relations counselors to notify the Department of Children and Families (DCF) of information indicating that a defendant poses a danger or threat to a child or custodial parent; and
7. requires the chief court administrator to study and assess family violence training programs.

The act establishes a 16-member task force to (1) evaluate law enforcement agencies' policies and procedures for responding to incidents of family violence and restraining and protective order violations and (2) develop a model statewide policy for such responses.

It specifies that guardians ad litem and attorneys appointed in abuse and neglect cases acting within the scope of their employment are among the state employees immunized against personal liability.

The act also modifies the exception to a spouse's privilege to choose whether to testify against his or her spouse in a criminal proceeding.

Lastly, the act makes minor conforming and technical changes.

EFFECTIVE DATE: October 1, 2011, except for the provisions on the task force and chief court administrator's assessments and studies, which are effective upon passage.

§§ 1-6 — FAMILY VIOLENCE

Family Violence Defined

By law, “family violence” is an incident, other than the nonabusive disciplining of a minor child, between family or household members that either causes physical injury or creates fear that physical injury is about to occur. “Family or household members” include individuals in, or who were recently in, a dating relationship. The act specifies that a person of any age may be in a dating relationship for the purpose of identifying family or household members under family violence laws.

Restraining Orders

The act expands the conduct that can serve as the basis for a restraining order. It allows any family or household member to apply for such an order if he or she has been subjected to stalking or a pattern of verbal intimidation or threatening. By law, continuous threat of immediate physical pain or physical injury can also be the basis for the order.

Existing law allows courts to issue restraining orders after a hearing or, in an emergency, without a hearing. The court may include in the order any provisions necessary to protect the victim from injury or intimidation, including requirements for temporary child custody or visitation rights. Orders typically prohibit the offender from assaulting, threatening, molesting, or restraining the victim or entering the family’s or victim’s dwelling. The order is effective for six months unless the court extends it upon the applicant’s or its own motion. Anyone violating the order can be held in contempt of court. Additionally, entering or remaining on property in violation of the order constitutes first-degree criminal trespass, which is a Class A misdemeanor (see Table on Penalties).

Investigating Family Violence Crimes

The law outlines appropriate actions by police and court personnel responding to family violence crimes. The act expands the people police officers must immediately arrest upon learning that such a crime has been committed in their jurisdiction. Under prior law, police had to arrest and charge any suspected family violence offender, other than a person involved in a dating relationship. The act eliminates this exception, thus requiring that all suspected family violence offenders be arrested and charged.

It also requires police officers at the scene of a domestic violence incident to give the victim contact information for regional family violence organizations that employ people as, or make referrals to, counselors trained in providing “trauma-informed care.” The act defines this as services directed by a thorough understanding of the neurological, biological, psychological, and social effects of trauma and violence on a person.

Family Violence Response and Intervention Units

The law requires the Judicial Branch, through its Court Support Services Division, to have a family violence intervention unit in each geographical area court to respond to family violence cases. The units prepare reports on each case

for the court; provide or arrange for victim and offender services (including, under the act, referrals to counselors who provide trauma-informed care); and administer contracts to carry out these services. Generally, the information the units receive is confidential. However, the units may disclose information for specified purposes to their contract providers, prosecutors, DCF employees, bail commissioners, law enforcement agencies, and probation officers. Under the act, family relations counselors must, rather than may, notify DCF of information indicating that a defendant poses a danger or threat to a child or custodial parent.

The act expands the circumstances under which the units may share information with probation officers. It allows them to disclose information that may be used to conduct a presentence investigation on, and recommend an appropriate sentence for, a defendant convicted of a family violence crime. Previously, use of such information was limited to determining the offender's service needs and supervision level.

The act eliminates the restriction on when the units may disclose information to their contract providers and restricts the information that may be provided. Under prior law, they could disclose the information only after the disposition of the family violence case. The act eliminates this restriction, thus allowing units to share the information during the pendency of the criminal proceedings. It prohibits the units from disclosing information to contract providers that would personally identify a victim.

Family Violence Education

By law, a pretrial family violence education program serves people who are charged with, but not convicted of, a family violence crime. In order to qualify for the program, a defendant must not:

1. be charged with an A, B, or C felony; unclassified felony punishable by more than 10 years imprisonment; or, unless there is good cause, a class D felony or unclassified felony punishable by more than five years imprisonment;
2. have previously participated in the program; or
3. have been convicted of, or accepted accelerated rehabilitation for, a family violence crime committed after October 1, 1986.

By law, any defendant placed in the program is released to the custody of a family violence intervention unit for up to two years under such conditions as the court orders. By law, unchanged by the act, if the defendant did not enter a conditional plea (presumably because he or she was not asked to do so), successfully completes the program, and complied with any conditions the court set, the court must dismiss the charges. If the defendant violates the program's conditions, he or she will be brought to trial.

The act doubles, from \$200 to \$400, the fee defendants pay to participate in the program if they can afford it. One hundred dollars of the fee is nonrefundable.

Standing Criminal Protective Order

The act adds to the list of crimes for which a court may issue a standing criminal protective order. It allows courts to do so whenever a person is convicted

of committing or attempting or conspiring to commit:

1. aggravated sexual assault of a minor,
2. fourth-degree sexual assault,
3. risk of injury by willfully or unlawfully causing or permitting a child under age 16 to be placed in danger or in a situation likely to result in the child being injured or his or her morals impaired, or
4. risk of injury by having contact with the intimate body parts of a child under age 16 or subjecting the child to the offender's intimate body parts in a sexual and indecent manner likely to impair the child's health or morals.

By law, unchanged by the act, the court must find that (1) the victim is a member of the offender's family or household and (2) the order will best serve the victim and public's interest given the history, character, nature, and circumstances of the crime. Standing criminal restraining orders are effective until the court modifies or revokes them.

Violators of such an order are guilty of a class D felony (see Table on Penalties).

Restitution Services

The act adds domestic violence victims and their families to the list of people for whom the Office of Victim Services may order restitution services, including medical, psychiatric, psychological, and social services. The office may already order restitution for families of homicide victims and victims of child abuse or sexual assault and their families.

The act provides that those who commit the above-listed crimes are not eligible for restitution services as "family members."

§ 4 — PROTECTIVE ORDER

The act eliminates a requirement for protective orders issued after notice and a hearing to include notice that the order "is accorded full faith and credit pursuant to 18 USC § 2265, as amended from time to time." Instead, it requires that the order be accompanied by notice that is consistent with the full faith and credit provisions of the federal law (see BACKGROUND).

§§ 9 & 10 — POSSESSION OF FIREARMS

For people who know they are the subject of a restraining or protective order or foreign order of protection resulting from the use or attempted or threatened use of physical force, the act eliminates the option to transfer any firearm they possess to someone legally allowed to possess it. Under the act, whether or not they are convicted, they must deliver or surrender the firearm to the public safety commissioner or sell it to a federally licensed firearms dealer. By law, failure to relinquish possession within two days of the event giving rise to ineligibility is a class D felony (see Table on Penalties).

When such a defendant chose to turn the firearm in to law enforcement, prior law gave him or her or a legal representative up to one year to transfer it to

someone who could legally take possession. Under the act, the defendant's only option is to sell the weapon to a federally licensed firearms dealer. Existing law, unchanged by the act, requires the commissioner to destroy such firearms if they remain in his possession for longer than one year.

The act broadens the information the public safety commissioner, chief state's attorney, and Connecticut Police Chiefs Association must include in their update of the protocol they developed to ensure that people who are ineligible to possess firearms either transfer them to someone eligible or deliver or surrender them to the commissioner to include specific instructions on delivering and surrendering firearms. The update must already include specific instructions on transferring firearms. By law, the protocol covers instances in which more than one law enforcement agency is necessary to ensure the transfer, delivery, or surrender.

§§ 11-13 — CRIMINAL LIABILITY OF PROTECTED PERSONS

The act prohibits anyone listed as a protected person in a protective order, standing criminal protective order, restraining order, or foreign order of protection from being held criminally liable for (1) soliciting, requesting, commanding, importuning, or intentionally aiding in the order's violation or (2) conspiring to violate it (see BACKGROUND). Their actions may nonetheless subject them to arrest on other grounds.

§ 19 — TASK FORCE TO EVALUATE LAW ENFORCEMENT RESPONSES

The act establishes a 16-member task force to (1) evaluate law enforcement agencies' policies and procedures for responding to incidents of family violence and restraining and protective order violations and (2) develop a model statewide policy for such responses. The model policy must include arrest procedures required by existing law.

The task force must report its recommendations for a model policy and implementation plan to the Judiciary Committee by December 1, 2011. The task force terminates on that date or January 1, 2012, whichever is later.

The task force consists of:

1. one person each appointed by the governor and the top four legislative leaders, any of whom may be legislators;
2. a representative of the Police Officer Standards and Training Council experienced in domestic violence training appointed by the council chairperson;
3. representatives of the Office of the Chief State's Attorney, Office of the Chief Public Defender, and Office of the Victim Advocate appointed by the head of each office;
4. a representative of the Division of State Police experienced in domestic violence training appointed by the public safety commissioner;
5. a Superior Court judge assigned to hear criminal matters appointed by the chief court administrator;
6. a domestic violence victim, victim advocate with in-court experience in domestic violence matters, and Connecticut Coalition Against Domestic

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Violence, Inc. representative, each appointed by the coalition's executive director;

7. a Legal Assistance Resource Center of Connecticut representative appointed by the center's executive director; and
8. a Connecticut Police Chiefs Association representative appointed by the association's president.

The act requires the appointing authorities to (1) make their appointments by August 8, 2011 and (2) fill vacancies. The task force members must select two chairpersons from their ranks who must schedule the first meeting to be held, and hold it, by September 7, 2011. The Judiciary Committee's administrative staff serve as such for the task force.

§ 20 — JUDICIAL DEPARTMENT STUDY AND ASSESSMENT

The act requires the chief court administrator to:

1. study the principles and effectiveness of the pretrial family violence education program using results-based accountability;
2. as a part of the study, identify the program's goals, fundamental elements, and critical components, assess its short- and long-term outcomes, assess the feasibility and cost of extending (a) the program beyond its nine week length and (b) the EVOLVE and EXPLORE programs (see BACKGROUND) to all regions of the state, and compare the pretrial family violence education program to the pretrial diversionary domestic violence programs in other Northeastern states, and
3. study the principles and effectiveness of Connecticut's domestic violence dockets and related contracted programs using results-based accountability, including the goals, fundamental elements, critical components, and short- and long-term outcomes of the dockets and programs.

The chief court administrator must report on the assessments and studies to the Judiciary Committee by January 1, 2012.

§ 18 — DEPARTMENT OF CHILDREN AND FAMILIES STAFF TRAINING

The act requires the curriculum that DCF must include in its staff development and training and educational programs to include the prevention, identification, and effects of family violence. Existing law requires training to improve the quality of DCF services and programs.

§§ 16 & 17 — SURETY BAIL BOND AGENTS, INSURERS, AND PROFESSIONAL BONDSMEN

The law prohibits surety bail bond agents, insurers, and professional bondsmen from soliciting business on property or grounds of facilities, such as prisons, detention centers, and courthouses where arrestees are likely to be found unless the arrestee or a potential indemnitor initiates the contact. The act permits individuals with apparent authority to act on the arrestee's behalf to initiate such

contact. Neither the act nor the law bars such agents, insurers, or bondsmen from soliciting in or on a police station's property.

By law, soliciting includes distributing business cards, print advertising, or any other written information directed at arrested persons or potential indemnators. It is permissible for surety bail bond agents and insurers and professional bondsmen to post their names, addresses, and telephone numbers prominently in designated locations on the property.

The act also removes a prohibition against those individuals from wearing or otherwise displaying identification other than their licenses on the property or grounds of a prison, community detention center, courthouse, or any other place of arrestee confinement.

§§ 7 & 8 — STATE EMPLOYEE IMMUNITY

By law, state officers and employees are not personally liable for damages or injuries caused while discharging their duties or acting within the scope of their employment, unless their actions are wanton, reckless, or malicious. The act specifies that individuals appointed under contract with the chief child protection attorney as guardians ad litem or attorneys to represent a party in a neglect, abuse, termination of parental rights, delinquency, or family with service needs proceeding are acting as state employees protected by the immunity provisions when acting within the scope of their employment. (PA 11-51 eliminates the position of chief child protection attorney and transfers her duties to the chief public defender.)

§§ 14 & 15 — SPOUSAL PRIVILEGE

Previously, a person could generally elect or refuse to testify against his or her spouse in a criminal proceeding under the so-called spousal privilege. The act modifies the exceptions to the privilege. Under the act, a spouse may be compelled to testify in criminal proceedings involving (1) spousal abuse consisting of sexual assault, bodily injury, or any other violent act attempted, threatened, or committed; (2) child abuse consisting of sexual assault, risk of injury to a minor, bodily injury, or any other violent act attempted, threatened, or committed and involving the minor child of either spouse or a minor child in a spouse's care or custody; or (3) ongoing or future criminal conduct jointly engaged in by both spouses.

In other criminal proceedings in which a spouse elects to testify, he or she cannot be (1) required to divulge oral or written communications with the spouse that were intended to be confidential or (2) allowed to testify about the communication without the consent of the other spouse, unless the spouse is deceased.

By law, a spouse can be compelled to testify in criminal cases involving spousal violence, cruelty to persons, risk of injury to a minor, abandonment of a child under age six, criminal nonsupport, first- or second-degree sexual assault, first-degree aggravated sexual assault, and patronizing a prostitute or promoting prostitution. The act restores the privilege when the crime is child abandonment,

criminal nonsupport, or related to prostitution unless the crime involved the use or attempt to use violence. It also restores the privilege for crimes in which the victim is not the defendant's child or spouse.

BACKGROUND

EXPLORE and EVOLVE Programs

EXPLORE and EVOLVE are two of three of the Judicial Branch's family violence programs. (The other is the Family Violence Education program.) Both programs are available to men convicted of domestic violence. EXPLORE is a 26-session cognitive behavioral intervention program that focuses on behavior change by helping participants develop awareness, build positive interpersonal skills, and understand the harmful effects of violence on victims and children. It is available in Bantam/Litchfield, Danbury, Danielson, Derby, Hartford, Manchester, Middletown, New Britain, New Haven, New London, Norwalk, and Stamford.

EVOLVE is a 52-session cognitive behavioral intervention program consisting of communication skill building, responsible parenting, and the impact of violence on victims and children. The program is available in Bridgeport, New Haven, New London, and Waterbury.

Definitions

Protective Order. Protective orders are criminal orders issued after an accused has been arrested for committing a family violence crime. They include provisions necessary to protect the victim from threats, harassment, injury, or intimidation. These orders generally terminate when the underlying criminal case concludes. However, under certain conditions, courts can issue a standing criminal protective order, in addition to any sentence of incarceration, against people convicted of certain family violence crimes. These orders stay in effect for a court-specified time period.

Restraining Order. A restraining order differs from a protective order in that restraining orders are civil and can be issued without the target of the order being arrested.

Foreign Order of Protection. A foreign order of protection is any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court of another state; the District of Columbia; a U.S. commonwealth, territory, or possession; or an Indian tribe.

Full Faith and Credit. A protection order issued by the court of one state, Indian tribe, or territory must be accorded full faith and credit by the court of another state, Indian tribe, or territory and enforced by the court and law enforcement personnel of the other jurisdiction as if it were the order of its own court.

Covered protection orders are those issued by a state, tribal, or territorial court:

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1. with jurisdiction over the parties and matter under the law of such state, Indian tribe, or territory; and
2. after reasonable notice and an opportunity to be heard.

In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by state, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights (18 USC §§ 2265 (a) and (b)).

Related Act

PA 11-45 makes changes to, and adds new, requirements for surety bail bond agents. It expands surety bail bond licensing and appointment requirements. It establishes (1) bail bond solicitation, record retention, and reporting standards and (2) premium financing, build-up funds, and collateral security requirements and restrictions. It requires agents to certify under oath to the insurance commissioner that they charged the bond premium rates the commissioner approved.

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